



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH

TYSON FARMS, INC.

VPDES Permit No. VA0004049

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Tyson Farms, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Tyson” means Tyson Farms, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Permit" means VPDES Permit No. VA0004049, issued on January 5, 2000 and which expires on January 5, 2005.
9. "VAC" means Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Tyson owns and operates a poultry-processing complex located at 11224 Lankford Highway in Accomack County, Virginia (hereinafter referred to as the "Facility"). The complex includes a fresh-pack plant and a rendering plant.
2. Pursuant to the Permit, Tyson is authorized to discharge processing plant effluent (treated wastewater) from the Facility. The treated wastewater discharges into an unnamed tributary to Sandy Bottom Branch, a tributary to the Pocomoke Sound and the Chesapeake Bay.
3. Part I.A of the Permit specifies maximum discharge effluent limitations for whole effluent toxicity and total recoverable copper. In April, June, July and October 2004 Tyson submitted Discharge Monitoring Reports indicating the following results:

Date	Effluent Characteristic	Limit	Reported
April 2004	Chronic toxicity	1.724 TU-C	5.26 TU-C
June 2004	Total recoverable copper	17 ug/L max	39 ug/L
July 2004	Total recoverable copper	17 ug/L max	34 ug/L
July 2004	Total recoverable copper	12 ug/L avg	16 ug/L
Oct 2004	Total recoverable copper	17 ug/L max	28 ug/L

4. During a DEQ inspection on May 5, 2004, DEQ staff documented an unauthorized discharge from the Facility stormwater holding pond. A process wastewater flow of washwater from the meal truck loading operation at the rendering plant was flowing into the stormwater pond and the stormwater pond was overflowing an earthen embankment into the receiving stream at the rate of approximately 2 gpm. Tyson sampled the discharge and the results were as follows: Total Suspended Solids 112 mg/L, Biochemical Oxygen Demand 132 mg/L, ammonia 41.2 mg/L, Total Kjeldahl Nitrogen 42.4 mg/L, and fecal coliform 13,600 colonies/100 ml.
5. During the May 5, 2004 inspection, DEQ also documented evidence that an overflow had occurred at the Facility rendering pump station. Reportedly the overflow was contained in a storm water ditch and did not discharge off site. The date that the overflow occurred is unknown.

6. At the time of the May 5, 2004 inspection, DEQ observed that the high water alarm for the Facility rendering pump station was not operational.
7. On July 28, 2004 Tyson notified DEQ that on July 28 and continuing into July 29, 2004 the stormwater pond again overflowed at the earthen embankment into the receiving stream. Reportedly, approximately 15,600 gallons were discharged. The Permit does not authorize a direct discharge from the stormwater pond. Tyson sampled the discharge and the results were as follows: Biochemical Oxygen Demand 27.6 mg/L, nitrate 65 mg/L, phosphorus 0.53 mg/L, and fecal coliform 25 colonies/100 ml.
8. Section 62.1-44.5(A) of the Code prohibits waste discharges or other quality alterations of state waters except as authorized by permit. Section 9 VAC 25-31-50.A and Part I.A and Part II.L of the Permit prohibit discharges to State waters except in compliance with the Permit. Part 1.A. requires that certain discharge limits be met. Tyson violated § 62.1-44.5(A) of the Code, 9 VAC 25-31-50.A of the Regulations and Part I.A and Part II.L of the Permit by failing to comply with effluent limits of the Permit as reported in April, June, and July 2004.
9. Section 62.1-44.5(A) of the Code prohibits waste discharges or other quality alterations of state waters except as authorized by permit. Section 9 VAC 25-31-50.A and Part II.F of the Permit prohibit discharges to State waters except in compliance with the Permit. The Permit does not authorize discharges from the stormwater pond. Discharges are only authorized from outfall 001. Tyson violated § 62.1-44.5(A) of the Code, 9 VAC 25-31-50.A of the Regulations and Part II.F of the Permit by discharging process waste waters from the stormwater pond into State waters on May 5, July 28, and July 29, 2004.
10. Section 62.1-44.5.B of the Code, 9 VAC 25-31-50(B) of the Regulations and Part II.H of the Permit require that any permittee who discharges or causes or allows a discharge of pollutants to State waters, notify DEQ of the discharge promptly. Tyson violated § 62.1-44.5.B of the Code, 9 VAC 25-31-50(B) of the Regulations and Part II.H of the Permit by failing to immediately notify DEQ of the May 5, 2004 discharge at the Facility.
11. Part II.Q of the Permit requires proper operation and maintenance of facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the Permit. Tyson violated Part II.Q of the Permit by failing to maintain the high water alarm at the Facility pump station.
12. The violations described above were cited in the following Notices of Violation, issued to Tyson: Nos. W2004-05-T-0002 (June 8, 2004), W2004-07-T-0001 (July 29, 2004), W2004-08-T-0003 (September 10, 2004), and W2004-11-T-0004 (November 30, 2004).

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Tyson, and Tyson voluntarily agrees, to pay a civil charge of \$18,400.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Tyson's Federal Identification Number and shall reference that it is being made as a requirement of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

2. Tyson shall submit to the attention of Francis L. Daniel, Director, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462 the following:
 - a. By February 15, 2005, an approvable corrective action plan and schedule to eliminate process wastewater and contaminated stormwater from entering the stormwater pond and to prevent unauthorized discharges from the stormwater pond.
 - b. By February 15, 2005, an approvable corrective action plan and schedule to control total recoverable copper below permit limits.
 - c. Upon DEQ approval of the corrective action plans and schedules addressed in items a and b above, the plans shall become a requirement of and enforceable under the terms of this Order. Tyson must commence and complete the DEQ approved corrective action plans pursuant to the approved corrective action plan schedules.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Tyson, for good cause shown by Tyson, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above-cited Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the sewage treatment plant as may be authorized by law; or (3) taking subsequent action to enforce the Order.

This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For the purposes of this Order only, Tyson admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.
4. Tyson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tyson declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Tyson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tyson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tyson shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which Tyson intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tyson. Notwithstanding the foregoing, Tyson agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Tyson. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tyson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Tyson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 16, 200⁵.

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

Tyson Farms, Inc. voluntarily agrees to the issuance of this Order.

By: Mike Ensley

Date: 12/14/04

State of Arkansas

~~Commonwealth of Virginia~~

City/County of Washington County

The foregoing document was signed and acknowledged before me this 14 day of
December, 2004, by Mike Ensley, who is
name

VP Sales & Marketing of Tyson Farms, Inc., on behalf of the corporation.
title & Production

Patricia A. Lewis

NOTARY PUBLIC

Washington County Arkansas
My Commission Expires 6/4/12

My commission expires: _____

Patricia A. Lewis